



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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MICHAEL DONOVAN
CHAIRMAN

RICHARD STARBARD
WILLIAM E. JOHNSON
SAMANTHA L. TRACY
PETER SMITH

Minutes of the Meeting of the Board held on September 13, 2022, and approved at the Board Meeting held on October 26, 2022; Motion of Board Member William Johnson and Seconded by Board Member Richard Starbard, the Motion Passed by a Vote of: 4-0, with Chairman Michael D. Donovan Abstaining.

September 13, 2022, Minutes of Board Meeting

The Auto Damage Appraiser Licensing Board (ADALB or Board) held a meeting on Tuesday, September 13, 2022, at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Donovan
Samantha Tracy
William Johnson
Richard Starbard
Peter Smith

Attending to the Board:

Michael D. Powers, Counsel to the Board

Call to Order:

Chairman Michael Donovan called the meeting to order at 10:00AM.

Chairman Donovan then asked those recording the proceedings to identify themselves and state with whom they were affiliated. Those responding to the Chairman's request were: Jim Steere of The Hanover Insurance Company, and "Lucky" Papageorg of the Alliance of Automotive Service Providers of Massachusetts.

For approval, the Board minutes for the Board meeting held on July 19, 2022:

Chairman Donovan called for a motion for approval of the Board minutes of the July 19, 2022, Board meeting. Board Member William Johnson made a motion to approve the Board minutes of the July 19, 2022, Board meeting, the motion was seconded by Board Member Peter Smith, and the motion passed by a vote of: 4-0, with Chairman Donovan abstaining.

Report by Board Member Peter Smith on the Upcoming Part-II examination for motor vehicle damage appraiser at the Progressive Insurance Service Center in Westwood, Massachusetts:

Mr. Smith reported that the Part-II examination was held August 13th attended by 57 applicants of which 56 passed and 1 failed. Mr. Smith noted there was a very good turnout and they had one of the best pass rates since he has been administering the examination. Board Member Smith thanked Progressive Insurance Company and their representative, Eric Dearborn, Jim Steere of Hanover, Davi Borba of Allstate, Sue Conena, and Ed Jankowski of MAPFRE for their assistance in conducting and scoring the exams. The next Part-II examination will take place on October 29, 2022.

Chairman Donovan thanked Board Member Smith for his excellent work and those who assisted him.

Report by Legal Counsel Michael D. Powers, appointed to the Massachusetts Special Commission established pursuant to Chapter 24, Section 130 of the Acts of 2021, to review issues about auto body labor rates charged by the auto body industry:

Chairman Donovan asked Mr. Powers to update the Board on the Special Commission's status. Mr. Powers provided an historical background about how the Special Commission came to be, the steps taken by the Special Commission, and the Final Report issued on April 13, 2022. Mr. Powers compared the Special Commission's report submitted on April 13, 2022, to another Special Commission's final report issued in 2008. This Special Commission's Final Report, which Mr. Powers acknowledged that he voted in favor of, offered an opportunity for the Legislature to make important changes to the process used for determining auto body labor rates and recognized the needs of the auto body shop industry as well as offering immediate relief to the auto body shops.

Mr. Powers stated that Mr. Papageorg was also a member of the Special Commission. Chairman Donovan asked Mr. Powers if he understood correctly that the Special Commission's report and recommendations were incorporated into the stalled Economic Bill which was pending at the end of the Legislative session. Mr. Powers advised the Board that he was unsure where that bill stood. Mr. Starbard suggested that AASP/MA's Executive Director, Evangelos "Lucky" Papageorg might be recognized to provide further background and details about the bill.

Chairman Donovan asked that anyone recording the meeting identify themselves. Mr. Papageorge and Mr. Steere, of Hanover Insurance, responded that they were recording. Chairman Donovan recognized Mr. Papageorg, who stated that discussion on the bill continues in the Legislature's Informal Session even after Labor Day. Chairman Donovan suggested that as such, anyone in the conference can object in the Informal Session, making the passage of the bill vulnerable noting that even if it passes it is likely to be less than what's been proposed. Mr. Papageorg asked why this issue was being discussed at the ADALB. Chairman Donovan responded that legislation could pertain to the interests of the Board. Mr. Papageorg questioned the reason for the discussion and whether is pertained to the ADALB's regulation, 212 CMR 2.00. and concluded that he did not understand why the ADALB was conducting a discussion the Special Commission's Final Report.

Chairman Donovan deferred the question to Mr. Powers, who informed Mr. Papageorg that the subject of labor rates is often a part of discussions brought before the Board and as legal counsel to the Board he keeps the Board abreast of such developments to avoid any surprise changes that may affect the Board. In the event the Legislature were to create a Board to review labor rates and/or a labor rate is established, under current law the Board would be the authority the fixed labor rate would be brought before. Board Member Johnson agreed, by stating the cost of the repairs directly involves the labor rate.

For consideration of the Board, dismissal of complaints brought against a previously licensed motor vehicle damage appraiser Adam Haddad, Complaint 2018-09A, 2018-08A, 2018-07A, 2018-13, 2018-12, 2018-11, and 2019-10:

Chairman Donovan asked Mr. Powers to report to the Board about this item. Mr. Powers noted the complaints which are pending involve formerly licensed motor vehicle damage appraiser Mr. Adam Haddad. The Board needed to conclude their review of the complaints and pointed out that Mr. Haddad pleaded guilty to 18 counts of insurance fraud against various insurance companies by means of appraisals completed under his appraiser's license. Mr. Powers stated that the Board was delayed in reviewing these complaints because of various reasons including a court order that was issued by a judge in Worcester Superior Court stating that Mr. Haddad had to stay 100 feet away from employees of the insurance company. Mr. Powers added that after Mr. Haddad was indicted, he attempted to reach a settlement agreement which was not agreed to and in fact Mr. Haddad's attorney filed public documents request on the Board demanding thousands of documents. His attempts to resolve the case were frustrated and ultimately Mr. Powers was compelled to attend the sentencing hearing conducted in the Middlesex Superior Court before Justice Wilson, wherein the Assistant Attorney General reported that one victim lost his motor vehicle and lost his ability to keep his job. Mr. Powers also noted that a part of the plea agreement was that Mr. Haddad would turn in his license, but when he reminded Haddad's attorney, he said he knew nothing, suggesting there was no communication between the attorney representing Mr. Haddad in the criminal matter and the attorney for Mr. Haddad in the civil matter. Because of this conduct that Board was compelled to proceed in the manner it did, by posting specific detailed notice of the contemplated action and the notice to permanently revoke Mr. Haddad's license.

Mr. Powers advised the Board that in the future when this type of complaint comes before the Board, the Board should consider involving the Attorney General's office as well as the Insurance Fraud Bureau (IFB) to take up the matter as they may be better suited to address such complaints.

Mr. Powers added that the IFB is holding a seminar specifically detailing their involvement in the prosecution of the case involving Mr. Haddad and Accurate Collision and what was learned from the investigation. The seminar will be held September 20th and is entitled "Accurate Collision: Hammered to Prosecution" the cost is \$25 per person. Board Member Johnson moved to dismiss the complaints and Board Member Richard Starbard seconded. A roll call vote passed by a Vote of: 3-0 with Mr. Smith abstaining because the complaints involved the company he is employed by Mapfre/Commerce Insurance Company and Chairman Donovan abstaining, because as a matter of procedure and good form under "Roberts Rules of Order" Chairman Donovan only will vote when his vote will have an impact: to make or break a tie.

Old Business:

Mr. Johnson asked what was the status on the CMR changes to the ADALB's Regulation. Mr. Powers advised the Board that the matter was before the General Counsel responded with questions Mr. Powers was able to answer to their satisfaction. Chairman Donovan asked if there is a time line. Mr. Powers suggested 30–60 days.

Mr. Starbard stated that in answer to the Chairman's request from the last meeting, he has crafted a letter to be sent by the Board to offending carriers who were delaying response times to make inspections of damaged vehicles.

Board Member Starbard read a proposed letter from the meeting of July 19, 2022. Mr. Johnson suggested the wording may be too harsh suggesting the offenses suggested should be prefaced with the word "may". Board Member Tracy asked if the words "multiple instances" may be outside on the Board's knowledge to be considered a fact. Mr. Johnson suggested that the letter be crafted to fit the recipient. Board Member Tracy suggested that not all carriers are "guilty" of the offense. Mr. Smith asked whether there is a need to address the fact that 211 CMR 123 and 212 CMR 2.00 differ in their time lines. Mr. Johnson advised that the changes to the Board's Regulations have changed that. Mr. Starbard reminded Mr. Johnson that the new Regulations have not yet been put in place pending approval, and noted his letter quotes 212 CMR 2.00 et seq. as well as Chapter 26 Section 8g and reminded the Board that his letter was written in answer to the item from last meeting and is intended for one carrier, the one which was noted at that meeting as the offending entity. The debate was whether the letter would go directly to a particular company or to all auto insurance companies doing business in Massachusetts to remind all of them of the rule. It was agreed that the letter is only going out to the company that violated the rule.

Next Board Meeting:

October 26, 2022, at Boston at 10:00AM at 1000 Washington Street, Boston, Mass.

Review of 100 complaints filed against motor vehicle damage appraisers licensed by the Auto Damage Appraiser Licensing Board brought by the same licensed appraiser who also owns an auto body shop, the majority of the complaints have been brought against 2 insurance companies and their authorized appraisers. The review by the Board will be conducted in accordance with the Auto Damage Appraiser Licensing Board's "Complaint Procedures" to determine whether: the Board lacks jurisdiction, the complaints are based on frivolous allegations, lack sufficient evidence, lack legal merit or factual basis, no violation of the regulation is stated, or other basis. During the review, the Board will not discuss the named appraisers or the named companies the complaints have been filed against. The Board will review the following Complaints:

Complaint 2022-52, 53, 58, 59, 63, 64, 66, 69, 76, 77, 79, 80, 81, 86, 87, 88, 89, 90, 91, 92, 95, 96, 97, 99, 100, 102, 105, 106, 114, and 116.

Complaint 2022-52: Mr. Starbard made a motion to move the complaint, to the next stage of the process, stating the appraiser is arbitrarily picking figures versus what the shop charges. Mr. Johnson seconded the motion and Chairman Donovan called for a vote, Board Member Starbard and Board Member Johnson voted yes and Board Members Tracy and Smith voted no. The motion failed by a Vote of: 2-2 with Chairman Donovan abstaining.

Complaint 2022-53. Board Member Johnson moved to dismiss the complaint, noting the shop's insistence on Original Equipment Manufacturer parts due to the vehicle being leased and the manufacturer position statement requires the use of OE Parts. Mr. Johnson suggested that when the vehicle has in excess of 15 thousand miles then the request for OEM parts is not supported by the regulations. Mr. Starbard seconded, stating that with the year and miles the car is likely out of a lease but in general an insurance carrier should comply with the manufacturer's position statements, including using of OE parts. In this case the carrier will not appreciate what the shop goes through with aftermarket parts. Chairman Donovan seeks a roll call vote Mr. Starbard and Johnson voted yes. Board Members Tracy and Smith voted yes. The motion to dismiss passed by a Vote of: 4-0, with Chairman Donovan abstaining.

Complaint 2022-58. Mr. Starbard moved to forward to the next step in the process, stating that this is like complaints from the last meeting, involving seat belt inspection and recalibrations. Mr. Starbard asked if anyone in the room would want their daughter to be driving a vehicle without addressing their seat belt needs after a collision. Board Member Tracy stated that there were other items in the complaint and noted the loss is recorded as a comprehensive loss, not a collision. Mr. Starbard suggested the car may have hit a deer. Mr. Johnson suggested that the vehicle may have been stolen. Mr. Johnson seconds the motion and Chairman Donovan called for a vote and Board Members Starbard and Johnson voted yes, Board Members Tracy and Smith voted no, and the motion failed by a Vote of: 2-2 with Chairman Donovan abstaining.

Complaint 2022-59. Chairman Donovan stated that this complaint is another that involved diagnostic scans. Board Member Tracy noted it also involves the appraiser's supervisor. Mr. Johnson stated the appraiser failed to identify the party who can complete the task for the amount he is listed on his report and moves to have the complaint moved forward and Mr. Starbard seconded the motion. Chairman Donovan called for a roll call vote with Board Members Starbard and Johnson voting yes and Board Members Tracy and Smith voting no. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining.

Complaint 2022-63. Mr. Johnson stated that this is the same as complaint 59, comparing it to an appraiser saying a fender costs \$100.00 but fails to let the shop know where to buy it and Mr. Starbard agreed. Mr. Johnson moved to have this complaint move forward and Mr. Starbard seconded the motion. Chairman Donovan calls for a roll call vote Board Members Starbard and Johnson voting yes, and Board Members Tracy and Smith voting no. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining.

Complaint 2022-64. Mr. Starbard moved to move forward with the complaint for a myriad of reasons and Board Member Johnson seconded the motion. Chairman Donovan called for a roll call vote with Board Members Starbard and Johnson voting yes and Board Members Tracy and Smith voting no. Chairman Donovan called for a roll call vote with Board Members Starbard

and Johnson voting yes, and Board Members Smith and Tracy voting no. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining. Mr. Smith asked a comment, noting this was a rear end damage on a comprehensive loss.

Complaint 2022-66. Mr. Johnson made a motion to forward with the complaint and Mr. Starbard seconded the motion. Chairman Donovan asks if the dollar amount is \$38.00 Mr. Starbard answers, it's whatever the appraiser pulled from thin air, noting it looks like \$38.00 because they're using their crazy labor rate. Chairman Donovan called for a roll call vote with Board Member Starbard and Johnson voting yes and Board Members Tracy and Smith voting no. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining.

Complaint 2022-69. Mr. Starbard made a motion to move forward with the complaint commenting this is another example of this appraiser pulling numbers from thin air and noted sometimes he uses \$40.00 for a scan and sometimes \$38.00 without any reasoning. Mr. Smith noted that the initial calling of the complaint referred to it as number 2022-67 when in fact it is 2022-69. Chairman Donovan agreed. Mr. Johnson states again, that this is like a part costing \$100.00 and the appraiser lists \$75 without comment or instruction where to locate the part at his listed price. Chairman Donovan called for a roll call vote and Board Members Starbard and Johnson voted yes and Board Members Tracy and Smith voted no. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining.

Complaint 2022-76. Mr. Starbard made a motion to move forward with the complaint with Board Members Johnson seconding the motion. Chairman Donovan called for a roll call vote and Board Members Starbard and Johnson voted yes and Board Members Tracy and Smith voted no. The motion failed by a vote of: 2-2, with Chairman Donovan abstaining.

Complaint 2022-77. Mr. Johnson moves to forward the complaint with his standard comments. Mr. Starbard seconds. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, No. Smith, No. The motion failed by a Vote of: 2-2, with Chairman Donovan voting to abstain.

Complaint 2022-79. Mr. Starbard made a motion to move forward, and Mr. Johnson seconded the motion. Chairman Donovan called for a roll call vote with Board Members Starbard and Johnson voting yes and Board Members Tracy and Smith voting no. The motion failed by a Vote of: 2-2, with Chairman Donovan voting to abstain.

Complaint 2022-80. Mr. Johnson moves to forward the complaint with his standard comments. Mr. Starbard seconds adding his own comments regarding scanning and Honda's seat weight calibration requirements. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, No. Smith, No. The motion failed by a Vote of: 2-2, with Chairman Donovan voting to abstain.

Complaint 2022-81. Mr. Starbard moves to forward with his standard critique of the appraiser's competence. Mr. Johnson seconds Mr. Starbard's motion. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, No. Smith, No. The motion failed by a Vote of: 2-2, with Chairman Donovan voting to abstain.

Complaint 2022-86. Mr. Starbard notes the complaint carries two Mitchell sheets with differing amounts. Mr. Smith finds the complaint confirms that the appraiser negotiated the P&M which is what he's expected to do and moves to dismiss the complaint. Chairman Donovan seeks the dollar amount of the difference. Mr. Smith approximates the amount at \$45.00 difference. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, No. Tracy, Yes. Smith, Yes. The motion to dismiss is approved by a Vote of: 3-1 with Chairman Donovan abstaining.

Complaint 2022-87. Mr. Starbard moves to forward with his standard comments. Mr. Johnson seconds with his comments. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, No. Smith, No. The motion failed by a Vote of: 2-2, with Chairman Donovan voting to abstain.

Complaint 2022-88. Mr. Starbard moves to forward with comments regarding the BMW required seat belt inspection process. Mr. Johnson seconds with his comments. Chairman Donovan calls for a roll call vote. Starbard, Yes. Johnson, Yes. Ms. Tracy notes the complaint includes the supervisor so votes No. Mr. Smith, No. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, Yes. Smith, No. The motion passed with a Vote of: 3-1, and Chairman Donovan abstained.

Complaint 2022-89. Mr. Starbard moves to forward against the original appraiser commenting again that the appraiser disregarded the manufacturer's recommendations. Mr. Johnson seconds. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, No. Smith, No. The motion failed.

Complaint 2022-90. Mr. Starbard moves to forward with his standard comments. Mr. Johnson seconds. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, No. Smith, No. The motion failed.

Complaint 2022-91. Mr. Johnson moves to have the complaint go forward with his standard comments. Mr. Starbard seconds. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, No. Smith, No. The motion failed.

Complaint 2022-92. Mr. Starbard moves to forward with his standard comments. Mr. Johnson seconds. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, No. Smith, No. The motion failed by a Vote of 2-2, with Chairman Donovan abstaining.

Complaint 2022-95. Mr. Starbard moves to forward with his standard comments. Mr. Johnson seconds. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, No. Smith, No. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining.

Complaint 2022-96. Mr. Johnson moves to have the complaint go forward comments regarding the seat belt and Mr. Starbard seconded the motion. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, Yes. Smith, No. The motion passed by a vote of 3-1 with

Chairman Donovan abstaining. Mr. Starbard asks for clarification whether the motion passed. Chairman Donovan confirms that it did pass.

Complaint 2022-97. Mr. Johnson moves to have the complaint go forward only on the original appraiser and adds comments regarding the involvement of the supervisor. Mr. Starbard seconds. Chairman Donovan clarifies that the motion seeks to move the complaint forward against the appraiser only and not the supervisors and calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, Yes. Smith, No. The motion passed by a Vote of: 3-1, with Chairman Donovan abstaining.

Complaint 2022-99. Mr. Johnson moves stating there is confusion on what was paid as the appraiser made a line item allowance without specifying what the amount represents. Mr. Johnson suggests shops may just want to list round numbers instead of detailing their estimates. Mr. Starbard agrees, seconding the motion. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, No. Smith, No. The motion failed by a vote of 2-2, with Chairman Donovan abstaining.

Complaint 2022-100. Mr. Johnson moves to forward the complaint citing a delay in the timeline. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, No. Smith, No. The motion failed by a Vote of: 2-2 with Chairman Donovan abstaining.

Complaint 2022-102. Mr. Starbard moves to forward with his standard comments. Mr. Johnson seconds. Chairman Donovan calls for a roll call vote Starbard, Yes. Johnson, Yes. Tracy, No. Smith, No. The motion failed by a Vote of: 2-2 with Chairman Donovan abstaining. Mr. Smith notes the vehicle was hit while parked and the appraiser notes with that, the electronics would not have been affected.

Complaint 2022-105. Mr. Johnson moves to have the complaint move forward. Mr. Starbard seconds Chairman Donovan calls for a roll call vote Mr. Starbard vote yes, Mr. Johnson voted yes, and Board Members Tracy and Smith voted no. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining.

Complaint 2022-106. Mr. Johnson moves to have the complaint move forward. Mr. Starbard seconds Chairman Donovan calls for a roll call vote Mr. Starbard vote yes, Mr. Johnson voted yes, and Board Members Tracy and Smith voted no. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining.

Complaint 2022-114. Mr. Johnson moves to have the complaint move forward. Mr. Starbard seconds adding that the claim number matches this time, acknowledges Mr. Smith's concerns with the prior complaint. Chairman Donovan called for a roll call vote with Board Members Starbard and Johnson voting yes and Board Members Tracy and Smith voting no. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining.

Complaint 2022-116. Mr. Johnson moves to continue this complaint as the complainant failed to sign the complaint and Mr. Starbard seconded the motion. Chairman Donovan advises the Board that he will ask Mr. Powers to notify the complainant. Chairman Donovan calls for a roll call

vote and Board Members Starbard and Johnson voted yes, and Board Members Tracy and Smith, voting yes. The motion passed by a Vote of: 4-0 with Chairman Donovan abstaining.

Mr. Starbard asked Mr. Powers how many remain in the queue and Mr. Powers answered about 30 or so remaining. Chairman Donovan called for a motion to adjourn, and Board Member Tracy moves to adjourn and Mr. Starbard seconded the motion. Chairman Donovan called for a roll call vote and Board Members Starbard, Johnson, Tracy, and Smith voted yes, with Chairman Donovan abstaining, the motion passed by a Vote of: 4-0.